



Ad 46.
The Commonwealth of Massachusetts
Department of Education ✓

1385 Hancock Street, Quincy, Massachusetts 02169



312066 0271 3213 9

M E M O R A N D U M

August 19, 1991

TO: Superintendents of Schools
School Committee Chairs
Other Interested Parties

FROM: Harold Raynolds, Jr. *R*
Commissioner of Education

RE: Additional Information on School Choice

This memorandum is written to respond to additional questions concerning the implementation of the School Choice law that have arisen since my July 22, 1991 memorandum, and should be read in conjunction with it.

1. May school committees honor agreements entered into prior to June 30, 1991 to admit privately-funded non-resident students who have not actually attended school in that school district?

Yes. Section 304 of Chapter 138 states that a school committee may continue to charge tuition to parents only for non-resident students who were admitted and attended its schools prior to June 30, 1991, their siblings, step-siblings and foster children residing in their homes. The sponsors of the School Choice Law have advised us that it was not their intent to force school committees to disavow non-resident tuition agreements or contracts that were made prior to June 30, 1991. This interpretation of the law is consistent with the clause of the U.S. Constitution prohibiting impairment of contracts. Accordingly, as long as there was an agreement prior to June 30, 1991 providing for admission of a student as a non-resident privately-funded student, the school committee may continue to honor that agreement. However, for the 1991-92 school year, no agreements made after June 30, 1991 to accept privately-funded, non-resident students will be valid unless such students had previously attended the receiving school on a private tuition basis or fall within the sibling/household exemption contained in the statute.

9-5/63

2. **May a school committee continue to accept children of school department or other municipal employees on a tuition basis?**

The same standard applies to these children as applies to other privately-funded non-resident students. If there was either an individual agreement or a collective bargaining agreement prior to June 30, 1991 to accept such non-resident students on a private-tuition basis, such agreements may remain in effect. Our reading of the School Choice law and the provisions of G.L. c.150E, §7(d) leads us to conclude that no collective bargaining agreements made after June 30, 1991 can include a provision that would allow non-resident employees' children to attend on a private-fee basis. However, a school committee may agree to admit such children for free.

3. **May a school committee continue to admit privately-funded students from other states?**

The same standard as in question #1 applies to these students.

4. **May parents use the School Choice program to seek admission of a student to an educational collaborative or a private school?**

No. The School Choice law applies only to admission to the public schools of a city, town or regional school district.

5. **What obligation does a receiving school committee have to a non-resident student whose special needs require placement in a substantially separate special education program that is not located in a public school regular education facility (502.4(i)), or is in a private day school (502.5), or is in a private residential school (502.6)?**

The School Choice law is designed to enable a student to attend the public schools of a community other than his/her community of residence. A student whose special needs require a non-public school placement would not be attending the public schools of that community, and the School Choice law would not apply. This situation is analogous to that of students in the Metco program who require a special education program that is not ordinarily delivered within the public schools of the host community. In such cases, fiscal and programmatic responsibility for the student's program remains with the school district of residence.

6. Who is responsible for providing special education transportation to a non-resident student admitted pursuant to School Choice?

A school committee that accepts a non-resident student who requires special education services must provide those services (except as described in question #5). The obligation to provide special education also includes an obligation to provide all of the related services listed in the student's Individual Educational Plan (IEP), which may include special education transportation. Therefore, the receiving school district will be required to provide transportation under these conditions, even though the School Choice law does not provide for transportation.

7. Must a school committee vote on whether or not to participate in School Choice?

Participation in the School Choice program as a receiving community is entirely at the option of each school committee. Therefore, while a formal vote should be taken if a school committee wishes to receive non-resident students under the program, there is no need to vote not to participate. Because participation is optional, the vote to participate may contain limits as to the scope of the program, e.g., "for the 1991-1992 school year" or "on an annually renewable basis" or "as long as resident enrollment is below X" or "for grades X - Z" or "for openings in the X school."

8. How should a school committee select non-resident students?

The selection of students is left to the discretion of the receiving school committee as long as there is no discrimination on the basis of "race, color, religious creed, national origin, sex, age, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language." In order to avoid allegations of discriminatory selection, we recommend that school committees indicate the number of openings at each grade level and that the application contain the minimum information necessary to select students, i.e. name and address of student applicant; name, address and telephone number of parent(s); prior school attended; grade completed; and grade placement requested. Additional information, including school records, may be obtained after the student is admitted. We strongly encourage superintendents of receiving districts to notify the superintendent of the district of residence when a student from that district has been accepted under the School Choice program.

9. If a non-resident student has been accepted, must the school committee keep that student until s/he graduates?

A school committee may accept students for one year at a time and require each non-resident student to reapply on the same basis as all other non-residents; or it may accept students on an annual basis with preference given to returning students; or it may guarantee non-resident students admission only until they complete the course of study offered at the particular school building they attend. While school committees have discretion in this area, we recommend the adoption of policies that minimize disruption to students' educational programs.

10. May a school committee that elects to participate in the School Choice program give preference in admissions to students who had previously attended as privately-funded students, or to siblings of current or former non-resident students?

Yes. Such a policy is neither prohibited nor required by the law.

11. Does the School Choice law affect the out-of-district vocational education program contained in G.L. c.74, §§7 - 8A?

No. Students who wish to attend out-of-district vocational education programs are still eligible to apply for such programs as provided in Chapter 74. Similarly, a school district may accept non-resident vocational education students under Chapter 74 and may or may not also participate in the School Choice program. Some of the differences between the out-of-district vocational education program and School Choice are: the Chapter 74 program is an option only if a similar program is not provided by the home district, but any student may apply under School Choice; transportation is provided under the Chapter 74 program but not under School Choice; the Chapter 74 program applies to secondary and post-secondary vocational programs, but School Choice is K-12 only; and students in the Chapter 74 program are accepted until they complete the program but students under School Choice may be admitted for only one year, depending on the school committee's policy.

12. Must school committees notify the Department of Education if they vote to participate in School Choice?

Participating school committees are required to provide information to the Department of Education and the State Treasurer by October 1 and April 1 about students in the

School Choice program, in order for the Treasurer to make the appropriate monetary adjustments. We request that school committees notify our Department in writing by September 1 if they have decided to participate in School Choice for the 1991-1992 school year. Tuition charges will be based on the costs reported for the 1990 - 1991 school year as contained in the End-of-Year Report. Therefore, we further request that receiving school districts submit their End-of-Year reports prior to September 15. If your school committee votes to participate in the School Choice program after September 1, please notify the Department as soon as possible after the vote.

We are working with the Department of Revenue and the State Treasurer to develop reporting forms that will be used. We anticipate that these will be similar to the forms previously used for the state ward tuition program. These forms will be made available to all participating school districts. The Treasurer's office has informed us that they expect to make payments and deductions under the School Choice program in December and June.

13. Since the tuition of students participating in School Choice is to be paid by a deduction from the home community's Chapter 70 state aid, what happens if that community's Chapter 70 funds are insufficient for this purpose?

Under the School Choice law as currently written, the only funding mechanism is to shift Chapter 70 funds from one community to another. If the student's community of residence has insufficient Chapter 70 funds for this purpose, legislative approval will be needed to fund this obligation from another source.

We will continue to keep you informed of further developments in the School Choice law, including any legislative amendments that may be enacted.